

MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

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August 31, 2017

Sandra J. Burgess, Town Clerk
Town of Amherst
4 Boltwood Avenue
Amherst, MA 01002

Re: **Amherst Annual Town Meeting of April 26, 2017 - Case # 8478**
Warrant Articles # 32, 33, 34, and 35 (Zoning)
Warrant Articles # 24, 26, 28, and 29 (General)
Warrant Article # 25 (Historic)

Dear Ms. Burgess:

Articles 24, 25, 26, 32, 33, 34, and 35 - Except for the text identified below in Article 34 [See pages 2 and 3], we approve Articles 24, 25, 26, 32, 33, 34, and 35 and the map pertaining to Article 25, from the Amherst April 26, 2017, Amherst Annual Town Meeting. Our comments on Articles 33 and 34 are provided below.

Article 28 - We have placed Article 28 on HOLD pending the Town's receipt of special legislation.

Article 28 seeks to amend the Town's general by-laws by adding a "Percent for Art Bylaw." The vote under Article 28 was also a vote to seek special legislation to establish the Public Art Fund, to establish .5% as an expense eligible for borrowing, and for any other purposes necessary to implement the by-law. Thus, certain provisions of the by-law adopted under Article 28 depend on the Town receiving a Special Act from the Legislature. Therefore, we have placed Article 28 on HOLD until the Town receives approval of the Special Act requested. Please contact us when you have received confirmation of the Special Act and we will issue a decision on the by-law.

Article 29 - We have retained Article 29 for further review.¹ We will issue a decision on this Article on or before our deadline of October 4, 2017.

¹ On August 21, 2017, we issued a signed extension agreement that extended our deadline for Article 29 for an additional thirty days. Thus, our new deadline for Article 29, is October 4, 2017.

Article 33 - Article 33 amends Article 6 of the Town's zoning by-laws by making specific changes to Sections 6.1, 6.6, and Table 3, "Dimensional Regulations" and its footnotes. One change amends Section 6.6 to provide as follows (new text in **bold**):

The dimensional regulations shown in Table 3 shall apply to all educational and religious uses located in the zoning districts listed, except as provided in below:

6.60 All structures approved after January 1, 1994, by a permit granting authority for education or religious uses shall have minimum front, side and rear setbacks twice the distance shown in Table 3 for that zoning district, except in the B-G District where the setbacks in Table 3 shall apply.

The Town must apply Section 6.6, and the by-law's dimensional regulations for religious and educational uses, consistent with the protection given to religious uses under G.L. c. 40A, § 3. General Laws Chapter 40A, Section 3, provide in relevant part:

No zoning . . . by-law shall prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements

General Laws Chapter 40A, Section 3, provides exemptions from local zoning for the use of land or structures for educational or religious purposes. However, Section 3 authorizes the reasonable regulation of such uses in eight areas. Such uses may be subject to reasonable regulations pertaining to bulk and height of structures, yard size, lot area, setbacks, open space, parking, and building coverage requirements. Thus, the Town cannot unreasonably regulate educational and religious uses and structures that enjoy protections given under Section 3. The Town should discuss the application Section 6.6 with Town Counsel.

Article 34 - Article 34 adds a new subsection 11.01 to Section 11.0, "Amendment," of the Town's zoning by-laws. The new subsection 11.01 provides as follows (with emphasis added):

After a public hearing in accordance with Article III – Public Hearing, of the Planning Board Rules and Regulations, the Planning Board may request and the Town Clerk may make nonsubstantive corrections including the following: reordering, renumbering, and correcting cross reference numbering and typographical errors where needed throughout this Bylaw.

We disapprove and delete the text above in underline and bold ("**and typographical errors**") because corrections to typographical errors are substantive by-law amendments that must be adopted pursuant to G.L. c. 40, § 32 and G.L. c. 40A, § 5. **[Disapproval # 1 of 1.]** Pursuant to those statutes, only Town Meeting is authorized to amend the Town's by-laws. The new subsection 11.01 would have authorized the Town Clerk to correct "typographical errors" to the town's zoning by-laws, without a Town Meeting vote.

General Laws Chapter 40, Section 32, governs the procedures for adopting and amending town by-laws. The adoption of or amendment to town by-laws, including any correction of typographical errors in the text of the Town's general by-laws, must be done in conformity with the provisions of G.L. c. 40, § 32. In addition, G.L. c. 40A, § 5, establishes the exclusive procedure for adopting and amending zoning by-laws, and provides in relevant part:

"Zoning...by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided.... No zoning...by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of...a town meeting[.]"

Zoning by-laws may only be adopted, amended or repealed consistent with G.L. c. 40A, § 5. If the Town Clerk were to make typographical corrections to the Town's zoning by-laws, this would qualify as a substantive amendment to the existing zoning by-laws without compliance with G.L. c. 40A, § 5. Therefore, the proposed amendment granting the Town Clerk the authority to correct typographical errors in the text of existing zoning by-laws is inconsistent with state law. For this reason, we disapprove and delete the text above in bold and underline ("and typographical errors").

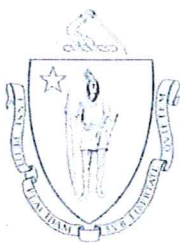
Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
MAURA HEALEY
ATTORNEY GENERAL

Kelli E. Gunagan

by: Kelli E. Gunagan, Assistant Attorney General
Municipal Law Unit
Office of the Attorney General
Ten Mechanic Street, Suite 301
Worcester, MA 01608
508-792-7600

cc: Town Counsel Joel B. Bard



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August 17, 2017

Joel B. Bard, Esq.
KP Law
101 Arch Street
Boston, MA 02110

Re: Extension of 90-day review period of Article 29
Amherst Annual Town Meeting of April 26, 2017
Case # 8478

Dear Attorney Bard:

Pursuant to the requirements of G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000, the Attorney General and Town Counsel are authorized to extend the 90-day period provided for the Attorney General's review of town by-laws for not more than an additional 90 days. This letter serves to satisfy the requirements of G.L. c. 40, § 32, as amended. In light of our need for time to further discuss the proposed by-law's consistency with state law, we hereby jointly agree to extend the Attorney General's review period of Article 29 for an additional 30 days. Our decision on Article 29 will now be due on **October 4, 2017**.

Please sign this letter to reflect your agreement and return the signed letter to us. We will then file the letter with the Town Clerk, with a copy to you. Thank you for your accommodation in this matter.

Very truly yours,

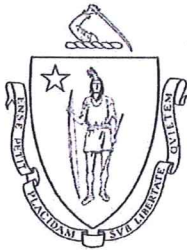
MAURA HEALEY
ATTORNEY GENERAL

Margaret J. Hurley

by: Margaret J. Hurley, Assistant Attorney General
Chief, Central Massachusetts Division
Director, Municipal Law Unit
Ten Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 x 4402

Joel Bard /nc
Town Counsel

8/21/17
Date



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September 28, 2017

Lauren F. Goldberg
KP Law
101 Arch Street, 12th Floor
Boston, MA 02110

Re: Extension of 90-day review period of Article 29
Amherst Annual Town Meeting of April 26, 2017
Case # 8478

Dear Attorney Goldberg:

Pursuant to the requirements of G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000, the Attorney General and Town Counsel are authorized to extend the 90-day period provided for the Attorney General's review of town by-laws for not more than an additional 90 days. This letter serves to satisfy the requirements of G.L. c. 40, § 32, as amended. In light of our need for time to further discuss the proposed by-law's consistency with state law, we hereby jointly agree to extend the Attorney General's review period of Article 29 for an additional 30 days. Our decision on Article 29 will now be due on **November 3, 2017**.

Please sign this letter to reflect your agreement and return the signed letter to us. We will then file the letter with the Town Clerk, with a copy to you. Thank you for your accommodation in this matter.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Margaret J. Hurley

by: Margaret J. Hurley, Assistant Attorney General
Chief, Central Massachusetts Division
Director, Municipal Law Unit
Ten Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 x 4402

Lauren F. Goldberg
Town Counsel
(initials)

September 28, 2017
Date